



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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1986 SEP 19 PM 3:23
OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

CHARLIE BROWN
ATTORNEY GENERAL

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

The attached legislative rule constitutes the official rule approved by the Attorney General's office on 15th day of September, 1986 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.


ATTORNEY GENERAL

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES 2

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

Section 1. General

- 1.1 Rule Designation - This rule is legislative.
- 1.2 Scope - This proposed legislative rule covers certain unfair or deceptive acts or practices covering home improvement transactions, and home construction transactions in West Virginia, its counties, and all political subdivisions.
- 1.3 Authority - W. Va. Code § 46A-6-103 and Code § 46A-7-102(e).
- 1.4 Filing Date -
- 1.5 Effective Date -
- 1.6 Repeal of Former Rule - Not applicable.
- 1.7 Penalties - Except as otherwise indicated, a violation of this rule constitutes a violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1 et seq.
- 1.8 Construction - This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1 et seq.
- 1.9 Severability - If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

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Section 2. Definitions

2.1 "Advertisement" (including the terms advertise and advertisement) means any oral, written or graphic statement made by the seller in any manner in connection with the solicitation of business, and including but not limited to statements or representations made in a newspaper, magazine or other publication, or on radio or television, or contained in any notice, handbill, billboard, poster, display, bill, circular, brochure, pamphlet, sign, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any goods or services offered for sale. Advertisement includes any statement or representation disseminated within West Virginia, even if such statement or representation was first disseminated outside West Virginia.

2.2 "Clear and Conspicuous" means that the statement, representation or term being disclosed is of such size, and/or color contrast and is so presented as to be readily noticeable and understandable to the person to whom it is being disclosed. A statement, representation or term contained in a written contract is not clear and conspicuous unless: (a) it appears in typeface at least 10% larger than size of the largest type used in the written contract, apart from the typeface used for other terms required to be clearly and conspicuously set forth by these rules, and (b) it appears in close proximity to the information which it modifies or to which the seller intended it to refer.

2.3 "Consumer Goods or Services" means goods or services purchased, leased or rented primarily for personal, family or household purposes.

2.4 "Home Construction" means constructing single family dwelling units including single family homes, condominium units or any other dwelling unit to be sold to any person primarily for personal or family use.

2.5 "Home Construction Contractor" means all persons, firms and corporations, their officers, representatives, agents, and employees engaged in the trade or commerce of home construction.

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2.6 "Home Improvement" means installing roofing, siding, paving, windows, doors, awnings, heating and air-conditioning equipment, water softeners and purifiers, swimming pools, fire protection devices, or fixtures of any kind, performing substantial landscaping work involving earth-moving, large scale replanting or reseeding or engaging in the substantial remodeling or repair of any portion of an existing home or noncommercial structure or building.

2.7 "Home Improvement Contractor" means all persons, firms and corporations, their officers, representatives, agents and employees engaged in the trade or commerce of home improvements.

Section 3. Home Improvement and Home Construction Transactions

3.1 In connection with any home improvement or home construction transaction, and without limitation by enumeration, it is an unfair or deceptive act or practice for any seller to:

3.1.1 Fail to provide the buyer a written contract, describing in a meaningful way the goods or services purchased, the contract price together with all required financing information or credit terms and any other material terms as required by these rules or agreed to by the parties; provided, however, that where the contract price is to be calculated on a "cost plus" basis, this fact shall be clearly and conspicuously set forth along with the method of calculating additions to cost and a good faith estimate of the eventual contract price;

3.1.2 Fail to provide an approximate completion date for all construction or improvements in the written contract unless the contract clearly and conspicuously discloses that no completion date is provided;

3.1.3 Fail to fill in all the relevant blank spaces in the written contract before it is signed by the buyer;

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3.1.4 Fail to include the home improvement or home construction contractor's name, address, and telephone number on the contract;

3.1.5 Fail to include in the contract proper notification of the buyer's right to rescind if required pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.15;

3.1.6 Fail to include in the contract all affirmations of fact, promises or descriptions which constitute express warranties under the terms of W. Va. Code § 46-2-313, or would so constitute express warranties if the sale of goods only were involved;

3.1.7 Disclaim, exclude, modify or otherwise attempt to limit any warranty, including the warranties of merchantability and fitness for a particular purpose, or to exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied;

3.1.8 Fail to substantially perform the home improvement or home construction contract, absent material breach by the buyer, or to deviate from or disregard plans or specifications in any material respect without the written consent of the buyer;

3.1.9 Make any misrepresentation in the promotion, advertisement or sale of a home improvement or home construction contract or make any false promise of a character likely to influence, persuade or induce;

3.1.10 Represent to a prospective buyer that his dwelling or building is to serve as a lure for prospective buyers, "model home," "advertising job" or other similar inducement, and that a reduced price is offered for that reason, if such is not the case;

3.1.11 Violate the prohibition on referral sales in W. Va. Code § 46A-2-110;

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3.1.12 Fail to complete the home improvement or home construction by the completion date as stated in the home improvement or home construction contract unless such home improvement or home construction is delayed by events beyond the home improvement or home construction contractor's control or the buyer has agreed in writing to a later date;

3.1.13 Attempt to induce a buyer to sign any certificate or completion form before such home improvement or home construction is actually completed;

3.1.14 Fail to disclose that any goods being offered need additional attachments or fixtures in order to perform the functions claimed for them by the seller;

3.1.15 Unfairly or deceptively induce or persuade a buyer or prospective buyer to sign any writing when the seller knows or has reason to know that the buyer or prospective buyer is unable to read or write, or does not understand the terms of the instrument;

3.1.16 Represent that the buyer or prospective buyer has been specially selected to receive a bargain, discount or other advantage which will reduce the cost of the improvements or goods, when such is not the case;

3.1.17 Fail to disclose to a buyer or prospective buyer orally prior to the time of sale, and clearly and conspicuously in the written contract required in § 3.1.1, that any promissory note or other instrument of indebtedness which must be executed by the buyer or prospective buyer, may be discounted, negotiated, or assigned to a finance company or other third party, and to clearly and conspicuously label any such instrument of indebtedness as a "Consumer Note";

3.1.18 Represent that the goods being offered are current models, when, in fact, they are not current models, or are discontinued models;

3.1.19 Misrepresent the quality, capacity, character, nature, manufacturer, or composition of any goods;

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3.1.20 Misrepresent or falsely state that the buyer's present equipment, materials, goods or fixtures are dangerous, defective or in need of repair or replacement;

3.1.21 Fail to clearly and conspicuously disclose that an advertised price or offer does not include delivery or installation;

3.1.22 Mislead the prospective buyer into believing that the down payment or some other figure constitutes the full amount the buyer will be obligated to pay, or to omit or exclude any other obligations, fees, charges or costs to the buyer;

3.1.23 Gain entry or access to the prospective buyer's home or property under the false guise of performing a governmental, public utility or other official inspection, or to represent that the seller is acting on behalf of or as an employee of any such entity, when such is not the case;

3.1.24 Represent that the seller is an employee, officer or representative of a manufacturer, importer or any other person, firm or organization, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract, when such is not the case;

3.1.25 Represent to a prospective buyer that the buyer is being given an introductory, confidential, closeout, going out of business, factory or wholesale price discount, that a price discount is being made due to "materials left-over from a nearby job," a test of the local market or a market survey or to otherwise falsely claim that the prices offered are discounted, when such is not the case;

3.1.26 Include in any preprinted or form document evidencing a home improvement transaction solicited by the seller, a clause acknowledging that the buyer has read and understood the contract;

3.1.27 Utilize preprinted or form contract documents in a transaction solicited by the seller which are structured in such a way as to characterize or constitute the buyer as the offeror, thereby requiring the buyer to sign or signify assent to a proposal before it is binding on the seller;

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3.1.28 Include in any contract or written document evidencing such a transaction a clause stating or suggesting that the seller's oral representations, promises, assurances, or the like, are not binding;

3.1.29 Include in any home improvement or home construction contract or written document evidencing such a transaction a clause requiring liquidated damages or the forfeiture of any deposit or any other amount already paid upon cancellation of the home improvement or home construction contract unless:

(a) Such provision is reasonable and does not constitute a penalty; and

(b) Such provision clearly and conspicuously discloses that it does not take effect until seller has fully complied with the right of rescission as stated in subsection 3.1.7 and/or the buyer's right to cancel as stated in subsection 3.2.

3.2 In connection with any home solicitation sale of home improvement(s) or home solicitation sale of home construction, and without in any way limiting the application of section 3.1 to such transactions, it is an unfair or deceptive act or practice to fail to provide the buyer a three-day right to cancel in all contracts where such notice is required by W. Va. Code § 46A-2-132 through 135, and 16 C.F.R § 429.

3.3 Provided, however, that, if no written agreement is in fact executed by the parties, the requirements of §§ 3.1.1 through 3.1.6, and any other provision that implicitly requires a written contract, shall be inapplicable to home improvement transactions with a contract price under \$250.00 or which are necessitated by a bona fide emergency.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

November 25, 1986

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25305

Re: Proposed legislative rule pertaining to the
prevention of unfair or deceptive act or
practices in home improvement and home
construction transactions.

Dear Secretary Hechler:

Enclosed please find the Notice of Rule Modification and a corrected copy of the above-referenced Rule. It has been modified and corrected to reflect suggestions made by the Legislative Rule-Making Review Committee. Please file the Rule, as modified, in the official records of your office.

If you have questions, please contact me at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. L. Hindes".

THOMAS L. HINDES, Director
Deputy Attorney General
Consumer Protection Division

TLH/lp

Enclosure

1986 DEC -1 AM 8 42
FILED

SUMMARY AND AGENCY APPROVED
PROPOSED LEGISLATIVE RULE

September 19, 1986

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES 2

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

SUMMARY OF PROPOSED LEGISLATIVE RULE

The Consumer Protection Division of the Office of the Attorney General is promulgating a Rule designed to prevent a variety of unfair or deceptive acts or practices by home improvement and home construction contractors in West Virginia.

The Rule is divided into three sections. The first, entitled "General," addresses the scope, authority, filing date, effective date, penalties, construction and severability of the Rule.

The second section contains relevant definitions.

The third and final section, entitled "Home Improvement and Home Construction Transactions," identifies those activities considered by the Consumer Protection Division to constitute unfair or deceptive acts or practices. A total of thirty-one (31) specific acts or practices are proscribed, including failure to provide a written contract, failure to provide the full price of the work to be performed, and misrepresenting that goods are specially discounted due to surplus from a previous job. The need for this section is underscored by the twelve-year experience of the Consumer Protection Division in handling complaints of this nature, our recent experience with flood-related complaints, and reports from other states engaged in similar enforcement activities.

For more information, please contact Thomas L. Hindes, Deputy Attorney General, Office of the Attorney General, Consumer Protection Division, 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301.

WEST VIRGINIA LEGISLATIVE RULE
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Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

- Section 1. General
2. Definitions
3. Home Improvement and Home Construction Transactions

REPORT ON PUBLIC HEARING
AND PUBLIC COMMENT PERIOD

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES 2

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

REPORT ON PUBLIC HEARING AND PUBLIC COMMENT PERIOD

The Public Comment Period with respect to the above-referenced legislative rule expired on August 29, 1986, and a Public Hearing on the proposed rule was held on that date, all pursuant to notice sent to the Secretary of State's office for publication in the State Register on July 17, 1986.

The following individuals attended the Public Hearing conducted by Attorney General Charles G. Brown:

Eleanora Wylie	Coalition on Legislation for the Elderly
Polly Diller	Department of Consumer Protection City of Charleston
Beth Thomasson	West Virginia Home Builders Association
Edgar Parks*	President, West Virginia Home Builders Association
John A. Browder	West Virginia Home Builders Association
T. J. Hamilton, Jr.*	West Virginia Housing Development Fund
Jane Theiling*	Attorney General's office

(NOTE: * Those speaking at Public Hearing.)

Comments received were generally favorable toward the proposed rules with all participants agreeing that there was a need for increased consumer protection activity in the home construction and home improvement area. Representatives of the West Virginia Home Builders Association raised a number of questions concerning particular sections of the proposed rule, however, and suggested criticism of others.

A general criticism was that the rules seemed to be too broad in their scope, perhaps applying to minor transactions which were not traditionally accompanied by formal contracting such as grass-cutting and minor home repairs. General concern was also expressed with respect to work occasioned by an emergency since formal documents are often not used in these situations. The applicability of Section 3.2 to emergency repairs was also questioned.

Section 3.1.1's failure to provide for "cost-plus" contracts was questioned, since this is a common method of fixing a contract price in home construction and repair. Sections 3.1.27 and 3.1.28 were questioned since they would appear to abrogate standard contract language. The provisions respecting express warranties and disclaimer of warranties were questioned with respect to their consistency with requirements under the Federal Magnuson-Moss Warranty Act.

Other comments received stressed the importance of obtaining a written contract prior to contracting for home construction or repair services. The Attorney General and

Consumer Protection Division staff met with participants following the meeting and attempted to answer numerous questions about the proposed rules, many of which simply reflected a misunderstanding of rule language or applicable state and federal law.

A taped transcript of the Public Hearing Proceedings and copies of all written comments received are attached hereto.

For further information, please contact Thomas L. Hindes, Deputy Attorney General, Director of the Consumer Protection Division, 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301.

DISCUSSION OF AMENDMENTS

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
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SERIES 2

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

DISCUSSION OF AMENDMENTS

Throughout the sections of the proposed rule, continuing review and editing have resulted in numerous wording changes. By and large these changes were accomplished in order to eliminate verbosity, grammatical errors and style inadequacies. Since changes of this type do not affect the intended meaning of the sections involved, no attempt is made herein to note or describe such changes. Only substantial changes or changes directly affecting the legal effect of rule language will be discussed.

Section 2.2 was amended in order to clarify sub-part (a) by stating that items which were required to be "clear and conspicuous" were to be printed in typeface at least 10% larger than size of the largest type used in the written contract, apart from the typeface used for other terms required to be "clearly and conspicuously" set forth by these rules.

Section 2.6 was amended to expand the definition to include more clearly all types of repair and remodeling work, including substantial landscaping projects.

Section 3.1.1 was revised in several respects for the purpose of clarification and in order to reflect information developed at the Public Hearing. First of all, this section was merged with original 3.1.2, 3.1.6, and part of 3.1.7 for the purposes of clarity and elimination of redundancy. The requirement of an "exact" description was replaced with the direction to use a "meaningful" description. In addition, allowance was made for the use of "cost plus" pricing terms. The elimination of former 3.1.2 and 3.1.6 resulted in a corresponding numbering change with 3.1.3 becoming 3.1.2 and so on, and 3.1.7 becoming 3.1.5 and so on. This discussion will use the new section numbers hereafter.

Section 3.1.4 was amended to include the contractor's telephone number along with other disclosures. Section 3.1.6 was amended to make the nature of express warranties more explicit and incorporate established Uniform Commercial Code principles on such warranties. Likewise Section 3.1.7 was amended to prohibit limitations on remedies; it now parallels W. Va. Code § 46A-6-107.

Section 3.1.8 was amended to conform the rule to standard contract terminology and to require written approval by the buyer of any modification. Sections 3.1.10 and 3.1.11 were split off from former Section 3.1.12, reflecting the essentially different nature of the deceptive practices

treated in the former section; Section 3.1.11 now reflects the original intention to incorporate the Code restriction on referral sales. From Section 3.1.11 on, the section numbers are only one digit behind the previous number, i.e., former Section 3.1.13 is now 3.1.12.

Section 3.1.12 was amended to permit delays for events beyond the contractor's control or upon written agreement by the buyer. Section 3.1.15 was amended to replace "should" know with the more standard negligence terminology, "has reason to know."

Section 3.1.26 was restricted in scope so that the prohibition on use of an acknowledgement clause applies only to form documents in a transaction solicited by the seller. Section 3.1.27 was amended to reflect more clearly the intention to prohibit sellers who solicit construction or improvement contracts from structuring the transactions as if the buyer is the offeror. Section 3.1.29 was amended to include the forfeiture of deposits and prepaid amounts within its requirements.

There was some confusion voiced at the Public Hearing with respect to the proper interpretation of Section 3.2. This section is merely intended to incorporate the three-day right of cancellation for home solicitation sales established in W. Va. Code §§ 46A-2-132-135 and under 16 C.F.R. § 429. The questions pertained to emergency repair situations. Since such situations are specifically exempted from the statute and rule, no need was seen to repeat exclusionary

language in Section 3.2. The rule does no more than incorporate by reference the Code and regulation sections.

Section 3.3 was added to eliminate some of the required formalities in small transactions and emergencies. Since written agreements are not typically used in such transactions, it was not believed to be necessary to formalize such agreements.

For further information, please contact Thomas L. Hindes, Deputy Attorney General, Director of the Consumer Protection Division, 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301.

BEFORE THE CONSUMER PROTECTION DIVISION
OF THE OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF WEST VIRGINIA

RECEIVED
AUG 29 1986
10 24 AM

IN THE MATTER OF: Proposed legislative rule pertaining to
the prevention of unfair or deceptive
acts or practices in home improvement
and home construction transactions.

Transcript of proceedings had or testimony adduced in a
hearing held at the House of Delegates Judiciary Committee
Room, Second Floor, Main Unit, Room 410, State Capitol,
Charleston, West Virginia, on the 29th day of August, 1986,
beginning at 10:00 a.m., pursuant to notice to all interested
parties.

BEFORE: HONORABLE CHARLES G. BROWN
Attorney General of the State of West Virginia

APPEARANCES: THOMAS L. HINDES, Director
Deputy Attorney General

MARK KINDT
Senior Assistant Attorney General

ANTHONY F. SERRENO
Assistant Attorney General

RANDAL DUNKLE
Staff Assistant

JANE THEILING
Director of Special Education
Consumer Protection Division
1204 Kanawha Boulevard, East
Charleston, West Virginia 25301

ELEANORA WYLIE
Coalition on Legislation for the Elderly
4219 Venable Avenue
Charleston, West Virginia 25304

POLLY DILLER
Director, Department of
Consumer Protection
City of Charleston
P. O. Box 2749
Charleston, West Virginia 25330

BETH THOMASSON
West Virginia Home Builders Association

JOHN A. BROWDER
West Virginia Home Builders Association

EDGAR PARKS, President
West Virginia Home Builders Association
700 Virginia Street, West
Charleston, West Virginia 25302

T. J. HAMILTON, JR.
Flood Insurance Project Manager
Office of Emergency Services
Building 01, EB80
Charleston, West Virginia 25305

ATTORNEY GENERAL BROWN: I would like to convene this hearing for public comment on proposed legislative rule making by the Attorney General. People have signed up, and I am just going to take it from the list here as people have signed up to have them speak, if you choose to speak as a public participant.

This public hearing is provided for in West Virginia Code §§ 29A-3-5 through 29A-3-7. It is a legislative rule; that means we are required and happy to seek public comment. It means that the legislative committee must approve it, and

the full Legislature approve it in the 1987 legislative session. What we have here is only a proposed rule, and we have already received both positive support for the rule and positive feedback in the sense of suggested criticisms and changes and we welcome that. This is only a draft and we will be accepting proposed changes and we will be keeping the record open at least for two weeks for comment. But if anybody needs more than that, we'll certainly accept any comments after that--all the way up to the legislative hearing when we will have to have it in the final form--for up until the time the Legislature says it must be in final form for them to consider it. Of course, at that point we couldn't accept further comment. But I am sure we will be learning today about what we can do.

The purpose of the first proposed rule pertains to unfair or deceptive acts or practices in home improvement and home construction transactions, and it is to prevent a variety of unfair or deceptive acts and practices in home improvement and home construction. The rule is intended to succeed the current emergency rule addressing such practices. Last fall, I wrote an emergency rule after the flood particularly aimed at flood counties to stop fraudulent practices for people that had to rebuild or repair their homes.

Notice of this proposed rule was forwarded to the State Register as required by law and notice of the public comment period in this hearing was forwarded to the State Register on July 17, 1986.

We also have at 2:00 o'clock this afternoon a hearing on proposed legislative rule making pertaining to unfair or deceptive acts or practices in the sale of damaged goods or damaged products; for example, representing a damaged good as being new. Now since this is the time we have invited people to come, we would be happy to accept comment on both rules at this time. If you would choose to comment on one or the other rule, either the home improvement or the damaged good rule, and we will accept them as pertaining to the rule for which you comment so no one will have to come back to this hearing two times.

I do want to introduce Tom Hinder, the Director of the Consumer Protection Division and Deputy Attorney General. Assistant Attorney General Anthony Serreno is here. Lee Pauley of the Consumer Protection Division, Senior Assistant Attorney General Mark Kindt and Staff Assistant Randy Dunkle. So these are the members of the Consumer Protection staff.

The record is now open for comment. Individuals may make a written statement. I already have one from Mr. Yoder and I will make that part of the record after Mr. Parks gives his presentation. This is not a fact-finding hearing, but simply a forum for the receipt of public input. All such input will be appreciated and will be taken under advisement and considered promptly in the consideration of any modification of the rules as proposed. Let me add that rule making is unlike a judicial hearing in that if someone wants to contact me informally, contact Deputy Attorney

General Hindes informally afterwards, that is very appropriate. No one should hesitate to come forward after this hearing and say I think it should be this and this. You don't need a lawyer to do that. Just come forward yourself, if you want.

We're going to have people just come up to the podium here and speak. Okay, Eleanora Wylie is here from the Coalition on Legislation for the Elderly. Do you want to speak, Eleanora? Okay, we're delighted to have you here. Eleanora is very active in senior citizen issues, and if you want to make a written comment later--you or your organization, Coalition of Legislation for the Elderly--well that would be great.

Polly Diller is next on this list, the head of Consumer Protection for the City of Charleston. Polly, what are your comments?

MS. DILLER: I don't have any comments to make other than I am very pleased you are doing this. We welcome these improvements.

ATTORNEY GENERAL BROWN: May I note then a comment that you are pleased we are doing this?

MS. DILLER: Yes.

ATTORNEY GENERAL BROWN: Thank you, from Polly Diller our Consumer Advocate in the City of Charleston.

And, I did not introduce Jane Theiling, I am sorry. Jane Theiling is Director of Consumer Education for the Attorney General's office and former director of Consumer Protection for the City of Charleston and predecessor of Polly and has really been organizing people to have this hearing today. Thank you.

Edgar Parks, the President of the Home Builders Association of West Virginia. Mr. Parks.

MR. PARKS: Thank you, Mr. Brown, for this opportunity to express the views of the Home Builders Association of West Virginia on this particular item that is before us this morning. First off, we want to commend the Attorney General and his office for their efforts in this behalf and we believe it is long overdue. And it's something that I believe that will benefit the consumers in our state. However, we do have some slight problems and then some grave problems with some of the specifics that are addressed in the rule-making process here this morning. And so while I am not very well acquainted with statute law or even common law for that matter, and we haven't had time to consult with our attorney on some of these things that have legal ramifications, I may be asking a few questions if you say this is an informal forum this morning.

On page 2, item 2.3, under definitions Consumer Goods or Services means goods or services purchased, leased or rented primarily for personal, family or household purposes.

It seems to us that this would require a contract between a homeowner and a boy he may hire to mow a lawn. And I don't know if that is the intent here or not, but that is the way it seems to read to us, and we think that this is getting just a little too restrictive; but, if that is not the intent, maybe the legal interpretation will be all right. We'll defer that until later.

Now, in the Section 3, on page 3, subsection 3.1.1-- Fail to disclose the exact nature, description, and price of the goods and so forth--and I'll not read the whole thing for the conservation of time-- but we are a little bit troubled with the one word, key word, there that is exact because in our businesses this would exclude cost-plus contracts. Because there is no way to exactly describe all of the events that are going to occur during the construction of either a house or whatever it may be. And, so we have a problem with that. And then the next one, item 3.1.2--fail to provide a written contract seems to indicate that oral contracts are excluded, and if that would be the case, we wonder if this is in conflict with contract law.

For a little bit here now, we go to the next page 4, item 3.1.9, excuse me, back to 3.1.8--Fail to include in the contract all warranty agreements of the home improvement or construction. Does this require a warranty by this statement? Is a warranty required? And, if so, then federal law tells us that we can either give a specific or limited warranty. And, of course, under the Magnuson-Moss Act, I understand that a warranty is not even required. But, of course, the one contractor who does not provide a warranty,

I realize, and we both realize, has left himself wide open for practically forever, I guess, to claims. So we're asking, does that require a warranty and what kind of a warranty, if so?

Skip a couple of pages and go over to page 6. We have no problems with all these others that we're skipping. We think they're good and are very much needed because we are troubled with much of these problems as you are, and our Executive Secretary tells us that outside of the Consumer Protection Agency here, that we probably get more complaints at the Home Builders office over on Virginia Street than anyone else in the state when people have problems. And, most of the time we find it is the builders that are not members of our Association who are involved, and we have no control over the situation. So the only thing we can do is commiserate with them. And so it brings a bad image upon the legitimate builder that is trying to do the right thing.

Over to page 6, Item 3.1.22, I don't know that this is really a problem with us, but we're questioning it, just in case, because that would seem to be very restrictive to have to reveal and disclose that your advertised price does not include delivery or installation. That should be something that is optional, we feel, because most items that you buy in our business--now I know there are items that you buy that other merchants sell that include delivery in the price and most do not include installation--but we wonder if there is some other way to address this rather than having to disclose that. I told somebody yesterday we are going to

have to get our attorney to draw us up a contract that would be a guideline for all of us and we want to make sure we are on good ground when we do that.

Down to Item 3.1.27--Include in any contract or written document evidencing such a transaction a clause of acknowledgment of having understood and/or read the document. This seems to be somewhat contradictory to the basis for a contract. If somebody does not read that contract, who's fault is it? If they sign it without reading it, and I don't feel, that most of our members, that this should be included in or be prohibited in a contract that you cannot put a statement in there above the individual's signature where, as they sign that thing they see that as the last thing they see that they have read and that they understand this document.

Okay, on over to the last page, under 3.1.30 down to 3.2, or no that is not part of 3.1.30, I guess this is 3.2 and this is our biggy. In connection with any home solicitation sale or home improvement or home solicitation sale of home construction, and without in any way limiting the application of 3.1 to such transactions, it is an unfair or deceptive act or practice to fail to provide the buyer a three-day right to cancel pursuant to W. Va. Code 46A-2-132 through 135 and 16 C.F.R. § 429. This would entirely exclude emergency situations by having to give the buyer a three-day period of time in which to change his mind. Now we know this is required under federal law of home purchase or any other contract, but let me give one instance. Say somebody's furnace blows up in the middle of the winter, it's below zero, and they have an emergency situation. They call

one of us to come and install a furnace and so we do it the next day and then provide them with the contract and the bill of sale, and three days later they decide we're not going to pay for this, we're going to exercise our right of rescission. And where does that leave us? And an emergency situation can encompass just numerous situations. And this is something we believe, by all means, should be included. Now how you interpret a emergency is something else, but I don't know what the legal interpretation of an emergency is, but we know what some of them are and we are faced with them, and the only reaction we could have is, no, we can't help you because we are going to be chancing losing several hundreds of dollars if this would apply. So we have been advised, Mr. Brown, that they are aware of this and, hopefully, there will be some changes made in the writing of this provision.

That's about all I have before me and, again, I want to thank Mr. Brown and his staff for this opportunity to present our problems concerning the promulgating of these rules, and we hope that we'll have adequate opportunity to further discuss them.

MR. KINDT: Could I make a point of application for the benefit of attendees?

ATTORNEY GENERAL BROWN: Yes, okay.

MR. KINDT: In terms of 3.2, we are very sensitive to the issues raised regarding emergency repairs. I think in

the majority of circumstances emergency repairs would not fall under 3.2 because they are not made door to door. I think that is one observation I would like to make.

MR. PARKS: They are usually made by request.

DIRECTOR HINDES: Actually, I think the complete answer to that is, that the statute itself provides an exception for an emergency repair so that the rule does not incorporate anything that would not already be provided for in the statute. The statute provides an exception for emergency repairs where a good faith beginning has been made on the work, so there is no three-day right to cancel.

MR. PARKS: So, this would not apply then?

DIRECTOR HINDES: This would not apply to emergency repairs.

MR. PARKS: But is there some overlapping contradiction there though that somebody may, I mean, are we going to have to go to a court of law every time one of these situations occur.

MR. KINDT: We recognize your point. I think we have been, it's the consensus that the 3.2 could reflect your concerns. I mean, we have no problem with making adjustments to the rule to correct, clarify this concern that we all recognize.

MR. PARKS: Yes, if some provision could be written into that rule for emergency provisions.

ATTORNEY GENERAL BROWN: Anybody else. Thank you very much Mr. Parks. Let me talk a little more about what you are discussing here. I would like to note that the Home Builders Association has been real cooperative on short notice and has been real cooperative generally. And, Beth, the complaints you send to our office and the work we have done with you, I think, is really commendable. And we hope to keep working with you and help eliminate fraud in this industry and work on consumer education. I think that the same goals you share in the Home Builders Association, we share, and this shows we are working toward the same thing here. I wanted to, I think Tom Hindes' point was, that on a three-day cooling off period if the work already begins within the three days, the consumer can't cancel. There is partial performance. We ought to say that. You know, I mean that situation I don't think could happen, but the consumer would owe the money, but let's put it in there. We will put it in the rule. Also, keep in mind that that's only door to door, home solicitation. Rarely would it happen anywhere that someone's at your door saying can I do repairs, and the consumer says yes, my furnace just blew up. You are probably going to call somebody and so you aren't covered by that anyway, the three-day right--that is only the door-to-door solicitations.

Mr. Browder, John Browder of the Home Builders Association. Are you here for public comment?

MR. BROWDER: I just found out about this this morning, but you answered a couple of questions in your last statement about the three-day cancellation. So, I do remodeling, it is more likely he may call me and say when can I start, and if you call me, well I figure you want it.

ATTORNEY GENERAL BROWN: Yes.

MR. BROWDER: So if I'm available tomorrow, I'll go tomorrow even if you just sign a contract tonight. The majority of my work is done on cost-plus basis. I don't want to say no, but what am I going to do.

ATTORNEY GENERAL BROWN: Now the three-day cooling-off period is only for somebody you are soliciting door to door. I doubt if you run your business that way.

MR. BROWDER: No, I don't.

ATTORNEY GENERAL BROWN: Now somebody calls you up and 3.2 doesn't apply at all. Isn't that right, Tom. That 3.2 only applies to door-to-door soliciting, not to people who call you up. It does not apply, but 3.1 does. Now Mr. Parks had a question Deputy Attorney General Hindes about 3.1.8. He says, Is a written warranty required? I guess that's what he asked.

DIRECTOR HINDES: I think the answer to that is, that if you give warranties, they should be expressed in writing.

There is no requirement in this rule to give warranties other than the general requirement that there are no "as is" sales in West Virginia, but if you actually give warranties in your discussion with the homeowner, the contract should reflect those warranties. There is nothing in this rule that requires you to give such a warranty.

MR. PARKS: Well, that was the question--if the warranty was required.

DIRECTOR HINDES: Yes.

MR. PARKS: Referring back to 3.1.7, we had a comment here from one of our members questioning whether a state legislative rule is required to ensure compliance with the federal statute.

DIRECTOR HINDES: Well, it has been the approach in this and other areas, under our general statute that prohibits unfair or deceptive acts or practices, to regard violations of federal regulations as amounting to unfair or deceptive acts, and where we have drafted rules we have attempted to say that specifically.

MR. PARKS: This does not exceed then the Magnuson-Moss Act?

DIRECTOR HINDES: No, this isn't really serving the same purpose as Magnuson-Moss.

MR. KINDT: One distinction that might be viable to draw is, that I think that we also, well, we have one category that is real estate; one category is home construction on the same property. But we have a contract to move both land and a contract to fill upon that land simultaneously--that's a pure real estate transaction. And these rules would probably not apply to them. Where we have just a contract to build a house, or to make a home improvement on a pre-existing house, the rules would apply.

MR. PARKS: Are you saying then a house that is contracted for, to be built on the owner's property would apply.

MR. KINDT: Yes, that would fall under the rules.

MR. PARKS: But, if I built one on my own property for future sale, that would not apply.

MR. KINDT: That would not apply. That goes back to the definition of consumer goods. There is a distinction, consumer goods are--real estate is also excluded from consumer goods. Real estate is never a consumer good under the statute from my understanding.

ATTORNEY GENERAL BROWN: Another question, on 3.1.1, as written, would that prohibit cost-plus contracts? Mr. Parks thinks it would. If it would, then we should decide whether we want to prohibit it. It is probably something we didn't think of when we wrote the rule. It's probably additional.

In 3.1.2, says are oral contracts excluded--Mr. Parks' question was, Tom.

DIRECTOR HINDES: I assume the answer to that is, "yes."

ATTORNEY GENERAL BROWN: Yes, I think that is what we intend.

MR. PARKS: Does that conflict with contract law? I don't know that much about law.

MR. KINDT: It does to the extent that we are talking about contracts less than \$500. Normal contract law would require any contract over \$500 to be in writing to fulfill the statute of frauds. So conceivably, this rule would modify contract law when your talking about contracts for less than \$500.

MR. PARKS: Anything over \$500?

MR. KINDT: Has to be. Normal contract law says it has to be in writing anyway to fulfill the statute of frauds requirement in standard contracts. Standard contract law, and correct me if I'm wrong Tom, requires that any contract over a certain amount of money, say over \$500, would have to be in writing.

DIRECTOR HINDES: For the sale of goods.

MR. PARKS: For the sale of goods. Now how about the construction of a house, now that's still a sale of goods however you interpret that. Many of our members operate like they used to--just a handshake. I mean, you got a friend, a relative, and there's not a written contract. I mean we're in jeopardy, I know that, but its based on mutual trust.

DIRECTOR HINDES: Yes.

MR. PARKS: But here, it would be--that would be excluded.

ATTORNEY GENERAL BROWN: I think our number one goal here is to put more of these things in writing. The complaints that we have, most frequent complaints in home improvement, are--and particularly its the door-to-door salespeople--those coming to people's homes, often in rural areas, usually with older people and doing the driveway work, the aluminum siding, the other work around the home, taking the money and running before the job is done. And we think we can protect the consumer a lot more with a written contract. Now we do think there are some things we ought to look at: one is dollar threshold. I mean, we really don't want to get the kid mowing the lawn. So, whether it's the dollar threshold or another way to omit the really small items; clearly, we need an exception to the emergencies.

I want to put on the public record Lee that Leff Moore could not be here today, but did want to convey with you

that there should be a change in the emergency situation. That was also conveyed by David Yoder. We're putting his letter into the public record from the Department of Rental Housing Association for West Virginia. He's their president. David Yoder of Morgantown. And that needs to come in.

I would like the staff to consider whether our rule should attach a sample contract. It could be quite simple, as there are say with car repairs, and just lay out in real simple language--just fill in the blanks on work to be done, estimated date of completion, price, whether its cost-plus or whatever the price is going to be and see if we can do that. But I think we would protect consumers a lot more if we required these door-to-door people and others who do this work to have a written contract, and we've got to keep it simple. We don't want people to deal in complicated contracts. That doesn't help the business person or the consumer.

Eleanora Wylie, do you have a comment?

MS. WYLIE: I am speaking for the consumer, and I think it is very important in this day and time that we need written contracts. We can't--I hate to say this--but you can't trust people and I know from experience. I should have had more sense but I was going to have some work done and my neighbor recommended someone, and we talked and I said let's sign a contract. And he said, well, I don't have one. So I sat down and spelled out everything in that

written contract and had him sign it. And that's the only thing that saved me because I did a very foolish thing. He said he needed the money for materials and I went ahead and gave him, I think, \$800 to buy the stove. And well, the job was never completed, and I started doing all this checking on him, in fact, I called Polly Diller. I was very cordial, and I got a lawyer, who happened to know this young man through his sister. I got all my money back, but I was very lucky. If I hadn't gotten him to sign that written contract that I myself wrote, I wouldn't have gotten any of my money. I would have been out \$800.

Then another thing happened a little bit later. I was going to get a security storm door from Sears. So I went down there and the young man says, "Well, you're supposed to pay one half now and one half when it comes in." I said no I am not going to pay a penny because I remembered what happened to me although Sears is a reputable place. So I explained the situation, and I did not have to pay for the order until after the door was installed. The consumer has to be protected. Now, like I say I'm ashamed of what I did because I consider myself to be knowledgeable. But what concerns me is these elderly people, a lot of them are illiterate, and they are intimidated if they need a written contract. I don't know, Charlie, if there is anything in here, but do you have to make a down payment just for a small home improvement, for instance?

ATTORNEY GENERAL BROWN: I don't think that's in here either way. I think that would be an agreement between the

buyer and the seller. I think that would be whether the buyer and seller agreed upon a down payment on the material or they don't.

MS. WYLIE: Like I say, I really think, well like mowing the lawn or something I think that's different, but anytime the buyer has more, or anything like that, there should be a written contract.

ATTORNEY GENERAL BROWN: Thank you. John.

MR. BROWDER: My comment on her part is that she is right, but sometimes the shoe is on the other foot. People refuse to pay us and you know the shoe can fit either way. It's not a one-way street, it can go both ways.

ATTORNEY GENERAL BROWN: See, that's why I think a simple contract for you men in work who are legitimate and are doing your job is fair for the consumer is something that's good for you, too. And what we're concerned about are things like these gypsy pavers and these people who are ripping them off over and over. And I think there is an advantage both ways. You have got it in writing, and later on if you don't have a contract in writing and somebody says I don't owe you any money and there is nothing in writing, what are you going to do. That is why, over and over, lawyers keep saying, "Put it in writing." And I know all of us from time to time don't, but oftentimes we wish for both sides we did.

MR. BROWDER: We are a bureaucratic nation. And that's why we are trying to overcome the people we're here talking about today.

ATTORNEY GENERAL BROWN: And that's why you are here today--to help do that. And I appreciate it. We've got Mr. Hamilton here today from the West Virginia Housing Development Fund as our next witness. You come on up here and speak.

MR. HAMILTON: Generally the Home Builders Association, more or less, spoke on, or pointed out what I want to talk about from the Housing Development Fund standpoint. So, we're not going to do anything but make some general comments about some of the things I have heard this morning. I have been fortunate enough to work in the '84 and '85 flood efforts. Up until a couple of months ago, I was flood campaign manager in the State of West Virginia. So I am familiar with fly-by-nighters, outreach communities door-to-door solicitations, and taking the money and run. Just some general comments I want to make is, what about the protection of the contractor. One of the things I have found in rural communities is some of these elderly people don't sign a contract. They go by the word is good as gold or a handshake-type thing. They are not going to sign a contract. They just don't want to be tied down by written language. They prefer, say you're going to do this job for me for x number of dollars and you'll finish it in x number of weeks. That's what they expect you to do. I don't know if it's something you want to look into or not. I don't know because

the contractor may be a legitimate contractor and without a written contract you might back off. Some people might have a problem with it.

One other thing I want to make a comment on which I heard a little bit about is the dollar limit. We feel that the Housing Development Fund should look at the dollar limit, and I'm sure it's been spoken already and probably the state statute and federal statute on the dollar amount. We think there should be a minimum, should at least spell it out in these proposed legislative rules for the benefit of the public in not understanding these things and the limits.

Okay, we did take exception to 3.2. That's the three-day right of cancellation. And that's been pretty well discussed today. We look upon when we have an emergency what can we contract for or the performer can do pertaining to an emergency. One other general comment on the 3.1.9 and then we find out this morning about the federal statute dealing with limited or full warranty. All in all, the Housing Development fund things this is a good proposal to protect consumers in the flood areas primarily because in the flood areas you are dealing with the elderly people. Elderly people who haven't in the past dealt with written contracts when it comes to consumer goods and services, and this is something we see good come out of.

ATTORNEY GENERAL BROWN: Thank you, Mr. Hamilton. I appreciate you coming over from the West Virginia Housing Development Fund. That agency has really been the lead

agency in the whole area of rehabilitation of this horrible flood in 1985, as well as the Williamson floods in 1977 and 1984. We have hundred-year floods quite frequently in this state actually. There is no one else on this list. Are there any other staff comments. Ms. Theiling?

MRS. THEILING: I have some statements to put on the record.

ATTORNEY GENERAL BROWN: Good.

MRS. THEILING: The first statement I am reading is for Kathy Hoover, who is the Director of the Mediators. The people who work directly with consumers in our office. I'll just read her statement.

"My name is Kathy Hoover and I am the Mediation Supervisor in the Consumer Protection Division of the Attorney General's Office. It is the experience of the Consumer Protection Division, as well as similar offices in other states, that one-third of complaints received include home improvement and home construction problems. The reasons are these complaints involve relatively large sums of money and the services involved are usually beyond the normal skills of the average consumer. In 1986, year to date, our Division received and acted upon approximately 1372 home improvement and home construction complaints. In most instances we attempt to resolve the complaints through mediation. By means of conferences, telephone calls, and letters, business

are advised of complaints and encouraged to resolve the complaints when possible. Many complaints are resolved successfully, there is little our Division can do to recover money handed out for work never fully completed or work that turns out to be unsatisfactory because those instances do not involve violations of law. When the consumer remains unsatisfied after mediation or when mediation is inappropriate, the consumer is advised of an alternative which may be available to resolve the complaint, such as magistrate court, a private attorney, or another governmental agency. Many of the complaints involve the so called "gypsy" contractors. "Gypsy" contractors travel from state to state and are experts at spotting peeling paint, loose shingles, cracking driveways, and roofing problems. They offer to perform such work at a "special bargain price." When the job is about half completed, the contractor tells the consumer he needs money for more materials. If they receive a check they go straight to the consumer's bank to cash it, and then they're gone.

"A recent case involved a man who hired a "gypsy" contractor to pave his driveway. After the job was completed they talked the consumer into paving the road in front of his house at a cost of above \$5,000. It turned out the man had paid \$5,000 of his own money to get a county road paved. While the paving scam is one of the most widespread, other home improvement scams involve waterproofing roofs. In these cases the contractors put down used motor oil and the first time it rains the oil washes off. The annual cost of these con jobs is estimated to be in the hundreds of thousands of dollars.

"Consumers aren't the only ones who are hurt by unscrupulous contractors. Legitimate businesses also suffer. They are deprived from their chance at the consumer dollar. For these reasons our office came to recognize the need for the proposed legislative rule to prevent a variety of unfair and deceptive acts and practices by home improvement construction contractors in West Virginia."

Now, I would like to read my statement. I am Jane H. Theiling, Director of Consumer Education in the Consumer Protection Division, Office of the Attorney General. I have been Acting Director of the Consumer Protection Division and, for 10½ years I was Director of the Charleston Consumer Protection Department. I am a former member of the Legislature.

During all of the time that I have been actively engaged in Consumer Protection activities, the area of home improvements has been a leading cause of consumer complaints. A person's home is the most expensive thing that he or she will ever own. Maintenance, upkeep, additions are expensive, also. West Virginia ranks very high, is one of the leading states in single home ownership. We have 12.2% of our population over the age of 65, compared to a national average of 11.3%. Nationally, 75% of the population resides in a metropolitan area. In West Virginia, 37% of us reside in metropolitan areas. The rest of us are out in the country, up in the hollows, off by ourselves.

A great number of home improvements arrangements are by persons or a company soliciting by telephone, or appearing at the door, and there is little opportunity to check on the reputation of the firm. Almost any home can use some improvements, such as driveway paving, gutters cleaned and replaced, painting, siding, window replacement, weatherstripping. Often, such work is started with no contract. The homeowner having paid before any work is done, as the persons doing the work need the money to get supplies. Not only does the price change in the middle of the job, it seems to be going on for an unlimited time. All summer, with the homeowner, desperate to have his or her torn-up home put back together. Then, it is often discovered that the work is shoddy, the materials cheap, and the rip-off artists are long gone. Of course, reputable contractors and builders want no part of that Abbot and Costello, three stooges quality of work reputation, and they do offer explanations of what is to be done, what it will cost, and how long it will take, not to mention a written contract, but if the homeowner has dealt with an unreputable jackleg, he or she has scant chance to recover lost monies, and will have to spend more to have the bad job done over right. He or she could even be sued by the suppliers of materials if they have not been paid. This is a scene that must be changed, and can be corrected by the adoption of West Virginia Legislative Rule, Attorney General, Chapter 46A-6 and 46A-7, Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

ATTORNEY GENERAL BROWN: Thanks a lot, Jane. Anybody else. I appreciate the comments today. Mr Parks, yes.

MR. PARKS: With no reflection on the Attorney General's office, but is this going to really be enforced?

ATTORNEY GENERAL BROWN: Try our darnest.

MR. PARKS: This is a problem we have, but we've got a lot of laws as I understand on the books. I know it would take an awfully big staff to enforce the laws, but at the same time, we have a problem with the so-called jackleg, and I presume they are not represented here this morning. One instance happened right here in this city, I was just informed yesterday. A person had somebody who had done remodeling work for him and at a stipulated price. So when he finished--his problem was with faulty work--but, when he finished, he was going to pay with a check, and the guy said, hey you can make that cash, I'll give you a 20% discount. So the guy hurried to the bank and drew out cash and it was a state loss because a considerable amount of tax was there. And this is one of our problems, and I know this is true with the State Tax Department and I know they are beginning to work on this situation now. But at the same time, we can't compete with these guys, I mean, and do a legitimate job, pay our taxes and then we can't give a homeowner a competitive price because some other guy is going to come in and give him a discount and that is why we feel that there needs to be some real enforcement in things of this nature.

ATTORNEY GENERAL BROWN: Well, we will be helping the Tax Department considerably, I think, by this rule. That's right. Written contracts, we're going to see, we are going to watch what you are talking about. We're going to try to enforce it in every way we can.

Now, let me point out the efforts we have made in the last year and a half. Our Consumer Protection Division received about 1000 complaints a month when I took office and we now get 5000 phone calls instead of the 1000 because we have a toll-free line. We have a larger staff. The legal staff is now five lawyers instead of three. We think with rule making we're going to simplify enforcement and make it more effective because now we have a statewide rule. So I believe with the rule we're going to see changes across the board and a more effective way to meet enforcement. Sure, there is still going to be consumer fraud. Every state attorney general's office does consumer protection and every one of them is busy around the clock and around the calendar year. So every effort made is not, does not eliminate fraud in the marketplace by any means. But I am real confident that this rule will reduce the, increase the effectiveness, and in the same amount of time we will get more done. That's why we beefed up our legal staff as well as our complaint mediator staff to handle the complaints but also to change behavior across the board. And I think we will. I think, we certainly, our intention when you write a rule, and this was the first venture I have made into rule making, permanent rule making, other than legislatively mandated, which were the Lemon Law rules. We have the

emergency rule promulgated last year, but this is the first permanent rule making we have tried, and we certainly intend to make it work.

MR. PARKS: This is one of our greatest concerns. You have got our full support and this is a real problem to us because we just can't stay competitive with these guys running around underbidding us and undercutting us all of the time. One of the questions is, does this rule making apply to commercial construction?

ATTORNEY GENERAL BROWN: It does not. We do not have the authority to regulate in the area of relations between two businesses. Our entire statutory authority and duty is between the merchant and the consumer.

MR. PARKS: Well, the reason I asked this was personal. Main reason because we build several churches and, I mean, I don't know if, they are not really a business.

ATTORNEY GENERAL BROWN: Churches are not covered by it. Has to be for personal, family or household use.

MR. KINDT: Agricultural. Certain agricultural contracts might also fall upon. The closest thing we can get to commercial contract might be the construction of a barn. On a single farm that might fall under the statute.

MR. PARKS: It might.

MR. KINDT: At this point a lot of this is interpreted and I would say yes. I wouldn't say might, I would say yes. The truth, actually, agricultural law should be a modifier with regard to first of all, household family use.

MR. BROWDER: A point I would like to make right now is we let the law, as I think you would all agree with me, let someone like Jane Theiling over here or someone else that has a good knowhow to speak the english language, and not have anything to do with law, but don't know anything about the law, don't want to know anything about law, but maybe we can understand it.

ATTORNEY GENERAL BROWN: Jane has a way of trying to put lawyers out of business.

MR. BROWDER: Sometimes the truth hurts.

ATTORNEY GENERAL BROWN: I appreciate that. Okay, we'll try to do that. We'll be working with you. We want to come up with a good rule. We want to get it through the Legislature next year, so we certainly hope the people who came to testify will also help us if they like the final rule when we are through. And I think everybody will like it. Any more questions.

MR. KINDT: What the process will be, is that we'll take all your comments and all the written comments and we'll rewrite it. Okay, we'll be rewriting this to try to

make the rule reflect your comments that we received. I anticipate we'll be sending another draft out to everybody who is on this list.

MR. BROWDER: I was going to say make sure we are on the mailing list because we didn't get notified of it til this morning.

MR. KINDT: I understand and you'll receive the next draft, and after that draft I know we'll still want your input with regard to further improvements.

ATTORNEY GENERAL BROWN: Is there any other group or person we should be contacting?

MS. DILLER: Mr. Marshall, City Building Commission, David.

MR. KINDT: Yes, yes, David Marshall, City Building Commission stated.

ATTORNEY GENERAL BROWN: Does he have city building standards?

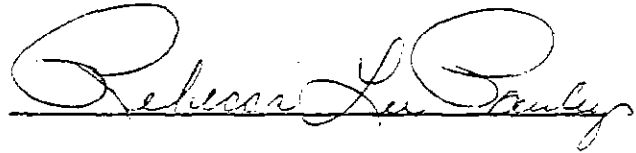
MR. KINDT: Yes, he might have.

ATTORNEY GENERAL BROWN: Okay, we appreciate it. If there is anybody else we thing we should ask. I don't know if there are any trade associations, public officials, others. We certainly want to add them. We'll keep the record open for two weeks, and anybody that want more time

than that, just ask Tom Hinder and we'll certainly give people time for more comments. We appreciate the written comments from Kathy Hoover, of the Attorney General's office; and David Yoder, President of the Department of Rental Housing Association of West Virginia; the advice from Leff Moore whose Association of Manufactured Housing and Heating, Air-Conditioning and Ventilation Association; and the oral comments of Jane Theiling, Mr. Parks, and Mr. Hamilton, as well as the informal comments of Mr. Browder, Ms. Wylie and Ms. Diller. Anyone else with any comments? Okay. We will not close the record, we will simply end this hearing and we'll have a 2:00 o'clock hearing on the damaged goods rule, but I think that hearing will be shorter.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, REBECCA LEE PAULEY, a Secretary in the Office of the Attorney General, Consumer Protection Division, do hereby certify that the foregoing transcript is true and accurate to the best of my skill and ability.



Rebecca Lee Pauley